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Nos. 09-1232 & 09-1233

In the
Supreme Court of the United States

GOVERNOR ARNOLD SCHWARZENEGGER, ET AL.,
APPELLANTS,

and

CALIFORNIA STATE REPUBLICAN
LEGISLATOR INTERVENORS, ET AL.,
INTERVENORS,

v.

MARCIANO PLATA AND RALPH COLEMAN, ET AL.,
APPELLEES.

On Appeal from the United States District Courts for the Eastern District of California and the Northern District of California

MOTION TO DISMISS OR AFFIRM OF THE *COLEMAN* PLAINTIFFS-APPELLEES

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QUESTIONS PRESENTED

1. Whether the Court's jurisdiction under 28 U.S.C. § 1253, which extends to orders "granting or denying ... an interlocutory or permanent injunction" rendered "by a district court of three judges," authorizes direct review of a single-judge district court's decision to convene a three-judge panel.

2. Whether the three-judge court clearly erred in concluding that the conditions for a prison population cap under 18 U.S.C. § 3626(a)(3)(E) were satisfied based on its fact-intensive determinations (i) that prison overcrowding is the primary cause of California's failure to provide inmates with constitutionally adequate mental and medical healthcare, and (ii) that, in light of numerous unsuccessful previous court orders spanning years of failed remedial efforts, "no other relief" would remedy the ongoing constitutional violations.

3. Whether the three-judge court's order requiring California to bring its prison population to within 137.5% of its prisons' total design capacity, while affording state officials broad discretion to choose which remedial measures will safely and effectively address the prison overcrowding crisis, is narrowly drawn, extends no further than necessary, and is the least intrusive means necessary to correct the ongoing violations of inmates' federal constitutional rights.

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MOTION TO DISMISS OR AFFIRM

Pursuant to Sup. Ct. R. 18.6, the *Coleman* appellees move to dismiss this appeal in part because the Court lacks jurisdiction to review a district court's decision to convene a three-judge court. The remaining questions presented are so fact-bound that this Court's plenary review is unwarranted. For reasons set forth below and for additional reasons set forth in the motion to dismiss or affirm filed by the *Plata* appellees, the Court should summarily affirm the lower court's decision.

JURISDICTION

The Court has jurisdiction under 28 U.S.C. § 1253 over appeals from orders of the three-judge court granting or denying injunctive relief, but it lacks jurisdiction over appeals from the single-judge courts' orders granting plaintiffs' motions to convene the three-judge court. Where jurisdiction lies, prudential considerations counsel against granting plenary review and in favor of summary affirmance.

STATEMENT OF THE CASE

This case seeks the Court's plenary review of an order issued by a three-judge district court, convened under the Prison Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626, requiring California to take whatever steps it deems necessary to ensure that, within two years, its prison population does not exceed 137.5% of its prison facilities' total design capacity. After a two-month trial, at which dozens of witnesses testified about current prison conditions, the three-judge court held that capping the prison population is the least intrusive remedy that will ease the unprecedented and entrenched

overcrowding crisis and allow the State to resolve the long-standing and continuing constitutional violations found by the single-judge district courts in *Coleman v. Schwarzenegger* and in *Plata v. Schwarzenegger*. Those courts determined that every day prisoners' lives and health are threatened because California is not providing constitutionally adequate mental health care (*Coleman*) or constitutionally adequate medical care (*Plata*) to inmates with serious needs. Despite more than 70 previous court orders, dozens of special master reports, numerous iterations of remedial plans spanning two decades of litigation, and even a receivership, severe overcrowding has prevented the State from resolving its inhumane prison conditions.

A. California's Prison Crisis

California's prison system is in the midst of what its Governor has called a severe "overcrowding crisis." Int.App. 61a. This crisis has prevented the State from remedying egregious problems infecting its prison medical and mental health care systems, which "'too often sink[] below gross negligence to outright cruelty,'" *Plata v. Schwarzenegger*, No. 09-15864, 2010 WL 1729472, at *2 (9th Cir. Apr. 30, 2010) (quoting *Plata* D.E. 371), and condemn prisoners to "horrific conditions without access to immediate necessary mental health care." *Coleman* D.E. 1800 at 2. If the system is not "'dramatically overhauled,'" an "'unconscionable degree of suffering and death is sure to continue.'" *Plata*, 2010 WL 1729472, at *2 (quoting *Plata* D.E. 371).

These intolerable conditions are especially acute with respect to mentally ill prisoners. California prisons lack adequate treatment resources and, as a

result, "critically mentally ill inmates" are left to "languish[] in horrific conditions without access to immediately necessary mental health care." Int.App. 45a. The prisons cannot transfer mentally ill patients to appropriate levels of care in a timely fashion. Int.App. 46a–47a. Systemic understaffing creates additional risks of serious harm. Int.App. 108a–112a. And suicides are occurring at an alarming rate. In 2006, California's suicide rate of 25.1 suicides per 100,000 inmates was nearly double the national average. Int.App. 123a.

The State has recognized the dangers of overcrowding. In 2004, the State's Corrections Independent Review Panel warned that overcrowding imperiled the safety of inmates and employees. Int.App. 56a. A year later, officials warned of "an imminent and substantial threat" to public safety from overcrowding. *Coleman* D.E. 2038 at ¶ 12. By 2006, California's prison population reached record levels, and since then its adult prison facilities have operated at nearly double their intended capacity. Int.App. 9a. In October 2006, the Governor declared a "Prison Overcrowding State of Emergency," acknowledging that all 33 of California's prisons "are now at or above maximum operational capacity, and 29 of the prisons are so overcrowded" that more than 15,000 prisoners are being held in conditions that pose "substantial safety risks." Int.App. 61a. The Governor noted that, in addition to the basic "lack of appropriate beds and space," the suicide rate is "approaching an average of one per week." *Id.*; Pls.' Trial Ex. 1 at 6. As the Governor explained, "the overcrowding crisis gets worse with each passing day, creating an emergency in the California prison system." *Id.*

Notwithstanding the Governor's emergency declaration, the State has been unable or unwilling to remedy overcrowding and, as a result, has failed to fix the constitutional deficiencies in its prison medical and mental health care systems. Although there have been modest improvements in some areas, the Governor's declared emergency remains in effect and conditions continue to deteriorate. The wait list for psychiatric inpatient care has reached unprecedented levels. *Coleman* D.E. 3831 at 2–3; Pls.' Trial Ex. 244 at 900129 (in February 2010, 574 male inmates wait-listed for high custody inpatient care, a three-fold increase since August 2008). As of March 2009, the State had no "viable" plan to increase mental health beds and treatment space, *Coleman* D.E. 3540, and its now-existing plan will not be implemented for nearly four years under the most optimistic scenario. *See Coleman* D.E. 3761. Unacceptable staff vacancy rates remain. *See Coleman* D.E. 3638 at 375–378. Inmates with serious mental disorders continue to "languish" in reception centers and in administrative segregation. *Id.* at 399. Transfers to mental health crisis beds "almost never" occur within clinically necessary timeframes and "delays of two weeks" are "common." *Id.* at 403. A recent Special Master report shows that 82 percent of suicide cases were preventable and/or foreseeable due to "inadequacy in assessment, treatment, or intervention"—the "highest rate of inadequacy in these areas in the past several years." *Coleman* D.E. 3677 at 1.

B. The Single-Judge Court Proceedings

California's unconstitutional prison conditions are not a recent phenomenon. The *Coleman*

litigation began more than 20 years ago, in 1990, when plaintiffs filed suit on behalf of prisoners suffering from serious mental illness. Bringing claims under the Constitution's Eighth and Fourteenth Amendments, the *Coleman* plaintiffs challenged the adequacy of mental health care at institutions within California's Department of Corrections. (Nine years ago, the *Plata* plaintiffs filed a similar suit on behalf of prisoners with serious medical needs failing to receive constitutionally adequate medical care.)

In 1995, the *Coleman* district court held that the State's delivery of mental health care to prisoners suffering from mental illness violated the Eighth Amendment. The court found "significant delays in, and sometimes complete denial of, access to necessary medical attention, multiple problems with use and management of medication, and inappropriate use of involuntary medications." *Coleman v. Wilson*, 912 F. Supp. 1282, 1308–09 (E.D. Cal. 1995). It noted that the prisons, by the State's own admission, were "chronically understaffed." *Id.* at 1306. And it found that the State lacked an adequate mechanism for screening mentally ill patients. *Id.* at 1312.

In the wake of that 1995 ruling, the State, along with a court-appointed Special Master, developed the first of a long series of attempted remedial plans, and the court directed the Special Master to monitor the State's attempts to implement its plan. Int.App. 36a–37a. In the past 12 years, the Special Master has filed 21 monitoring reports and 57 other reports. Int.App. 38a; *Coleman* D.E. 3638, 3677. In addition, the court has issued "well over seventy orders

concerning matters at the core of the remedial process." Int.App. 38a–39a.

None of these efforts has proven successful. As the single-judge court concluded, at no point since the *Coleman* plaintiffs filed their action two decades ago has California brought its mental health care delivery system into compliance with basic constitutional requirements. Int.App. 67a. Constitutional violations have persisted and indeed worsened. Int.App. 123a, 132a.

C. The Decision To Convene A Three-Judge Court

In November 2006, following the Governor's emergency announcement, the *Coleman* plaintiffs filed a motion to convene a three-judge court under 18 U.S.C. § 3626. That provision—entitled "Appropriate remedies with respect to prison conditions"—sets out the procedures by which a three-judge court may be convened to consider the appropriateness of a "prisoner release order." Under the PLRA, a "prisoner release order" is broadly defined to include not only orders that call for the release of prisoners but also any order "that has the purpose or effect of reducing or limiting the prison population." *Id.* § 3626(g)(4).

The single-judge court conducted an initial hearing in December 2006. At that hearing, the court granted a six-month continuance, offering the State an opportunity to demonstrate progress and outline measures it would take to improve prison conditions. Int.App. 68a–69a. The single-judge court also sought input from the Special Master, who concluded that ongoing space, bed, and staffing

shortages were "unquestionably exacerbated by overcrowding." Int.App. 69a. The Special Master estimated that the State "cannot meet at least ... 33 percent[] of acknowledged mental health needs.". Int.App. 68a–69a. It concluded that many of the State's achievements over the preceding 11 years had "succumbed to the inexorably rising tide of population." Defs.' Trial Ex. 1292 at 17.

The single-judge court reconvened proceedings in July 2007. Unfortunately, during the six-month continuance, conditions in California's prisons had further deteriorated. *See Coleman* D.E. 2156, 2236, 2301. Determining that the PLRA's requirements were satisfied, the court granted plaintiffs' motion to convene a three-judge court. Int.App. 65a. The court found that prison conditions had not improved and that the 33% rate of "unmet needs" in a mental health caseload of nearly 33,000 inmates was unconscionable. Int.App. 67a–69a. While acknowledging some progress, the court observed that California's "mental health care delivery system has not come into compliance with the Eighth Amendment *at any point since this action began*." Int.App. 67a (emphasis added). (At the same time, as described in the *Plata* appellees' motion, the *Plata* court entered a separate order granting the *Plata* plaintiffs' motion to convene a three-judge court.)

D. The Three-Judge Court Proceedings

The then-Chief Judge of the Ninth Circuit convened the three-judge court on July 26, 2007, ordering (without objection) that the same three-judge court would address the appropriate remedy in both *Coleman* and *Plata*. Int.App. 69a.

1. Current Prison Conditions

From September through December 2007, the parties engaged in extensive discovery. Discovery included prison tours in which the State's experts observed treatment areas, reviewed files, and interviewed prisoners and clinicians. *See* Defs.' Trial Exs. 1016, 1019. Plaintiffs' experts also conducted tours and prepared extensive reports describing the ongoing deficiencies in the prisons' medical and mental health care systems. *See Coleman*, D.E. 3201, 3217, 3231–10, 3231–14.

In November 2007, the three-judge court, affording the State another opportunity to avoid judicial intervention, referred the matter to a settlement referee. Int.App. 69a–70a; *Coleman* D.E. 2620, 2808. Settlement efforts were unsuccessful. From July through September 2008, the parties and their experts conducted new prison inspections and prepared new reports. *See* Defs.' Trial Exs. 1017, 1020; *Coleman* D.E. 3201, 3221, 3231–9, 3231–13, 3231–15. The parties acquired extensive information about the current state of California's prisons, analyzing electronically stored information from over 80 state officials and deposing 16 officials with responsibility for overseeing California's prisons.

At the close of discovery, the State filed a motion for summary judgment. Plaintiffs responded with overwhelming evidence of continuing constitutional violations. *Coleman* D.E. Nos. 3054–3061, 3063–3064. The three-judge court denied the State's motion in its entirety and set the matter for trial. Int.App. 70a.

At a pre-trial conference, the three-judge court clarified the scope of its proceedings, emphasizing that its role was not to re-adjudicate the existence of the underlying constitutional violations found by the single-judge courts. The three-judge court made clear that if the State wanted to make the case that violations no longer existed, it should direct that argument to the single-judge courts. 2008-11-10 Pre-Tr. 28–29. The three-judge court made equally clear, however, that the State had broad leeway to present evidence relevant to the PLRA's requirements, including the necessity of the remedy to address current conditions. *See, e.g.*, Tr. 837 (evidence of current conditions allowed to "illuminate[] the questions ... properly before the court"). Under the PLRA, an order limiting prison population is appropriate only if a three-judge court finds, by clear and convincing evidence, that (1) crowding is the "primary cause" of a violation of federal rights, and (2) "no other relief" will remedy that violation. 18 U.S.C. § 3626(a)(3)(E).

2. The Trial

Trial occurred in November and December 2008. Over that period, the court reviewed thousands of exhibits and considered oral and written testimony from nearly 50 expert and percipient witnesses. The evidence confirmed that California's overcrowded prison conditions have prevented the State from remedying its constitutionally inadequate medical and mental health care services.

The State's own witnesses testified at length as to problems associated with prison overcrowding and the current state of medical and mental health care. *See* Tr. 781–783 (shortages of inpatient placements),

770–775 (recent suicides in acute mental health unit), 796–799 ("overbedding" patients and turning patients away), 808 (waiting lists), 812–813 (efforts to recruit and hire mental health staff), 841–842 (unavailability of treatment space), 853–856 ("terribly overcrowded" conditions affecting mental health care), 904–906 (staffing levels). The State's mental health expert, Dr. Ira K. Packer, Ph.D., testified that the "primary cause" of California's inadequate mental health care system is that prisons have "many more acutely mentally ill individuals and at a level of more severity than had been anticipated when the prisons were built." Tr. 1079. In his "professional opinion, the lack of adequate intensive mental health treatment beds ... is the *primary cause* of the deficiencies in providing mental health care to mentally ill inmates." Defs.' Trial Ex. 1019 at 8 (emphasis added). Dr. Packer also testified that, in his "opinion, crowding is the *primary cause* of the particular difficulties in providing services" to mentally ill prisoners at "reception centers." *Id.* at 20 (emphasis added).

Intervenors' witnesses also conceded the harmful effects of overcrowding. For example, assembly-member Todd Spitzer, an outgoing chair of a select assembly committee on prisons, admitted that there is a "terrible overcrowding problem in California"; that California's prisons are "relatively inhumane"; and that recent legislation intended to address overcrowding by building new prisons had not been successfully implemented. Tr. 2460, 2461; *see also* Tr. 2733 (testimony of Sen. George Runner).

Other witnesses, including five correctional officers, testified that overcrowding directly affected

the State's continued failure to provide adequate medical and mental health care. *See* Tr. 509–510, 519 (too many prisoners with medical needs for space and staff), 575–577 (dangerously inadequate housing for suicidal prisoners), 601 ("way too many inmates" for treatment space), 664 (treatment room simultaneously shared by scheduling secretary and practitioners conducting hemorrhoid exams), 663–664 (patient intakes occur in hallways), 661–662, 665–666, 671 (insufficient staff monitoring provision of insulin and narcotics), 662–663, 668 (staff overwhelmed), 691, 693 (prison too crowded to monitor medical conditions).

On February 9, 2009, the three–judge court issued a tentative ruling, finding that plaintiffs had "presented overwhelming evidence that crowding is the primary cause of the underlying constitutional violations." *Coleman* D.E. 3514 at 2. The court noted that the overcrowded prison system "is itself, as the Governor as well as experts" have recognized, "a public safety hazard." *Id.* at 9. As the court explained, the uncontroverted evidence showed that, because of overcrowding, the State lacks sufficient clinical facilities, resources, and personnel to provide minimally adequate medical and mental health treatment. *Id.* at 3. The court also noted that the State's Independent Review Panel, chaired by former (Republican) Governor George Deukmejian, found that a prison population of 145% of design capacity was the outer limit for California prisons. *Id.* at 6. But, as the court explained, that outer limit did not account for the resources needed to provide even minimally adequate medical and mental health care. *Id.* The State's witnesses testified that new facilities should be limited to a population of no

more than 130% of design capacity, while other experts testified that specialized mental health clinical programs should operate at or below 100% of design capacity. *Id.*

The court nonetheless offered the State another opportunity to avoid further judicial intervention by granting time to resume settlement discussions. Int.App. 70a. The court waited for six months, but the State declined to negotiate a settlement.

3. The Orders Below

On August 4, 2009, the three-judge court issued a 183-page opinion and order finding that a 137.5% population cap was necessary to remedy the ongoing constitutional violations and that plaintiffs had satisfied each of the PLRA's requirements. Int.App. 1a–256a. Noting that "we do not intervene in matters of prison population lightly," the court underscored that 14 years of remedial efforts in *Coleman* had passed without resolving the underlying constitutional violations. Int.App. 12a, 31a.

1. The three-judge court found that overcrowding was the "primary cause" of the State's ongoing failure to provide constitutionally adequate mental health care services. Int.App. 82a. Although the court acknowledged that overcrowding was not the only cause of the constitutional violations, it found that until the State resolved the overcrowding crisis it would "be impossible to provide constitutionally compliant care to California's prison population." Int.App. 142a.

That finding was supported by clear and convincing evidence. The evidence showed that

overcrowding has exacerbated space, bed, and staff shortages, which continue to impede thorough health screenings and adequate emergency responses to those in need. Int.App. 91a–92a (inadequate care in reception centers); Int.App. 98a; 92a–95a (current space shortage); 101a–102a (current crowded conditions increasing spread of diseases); 103a (current crowded conditions "toxic[]" to mentally ill); 105a–112a (current staff shortages); 116a–118a (current lockdown problems preventing access to care); 121a–123a (current crowding increasing acuity of mental illness). Overcrowding has escalated "the incidence of mental illness" and exacerbated "the condition of those already mentally fragile and vulnerable." Defs.' Trial Ex. 1292 at 8. In addition, because mentally ill prisoners "often spend months in a reception center with little or no access to necessary mental health care while waiting for a bed," overcrowding has prevented adequate prisoner screening and treatment. Int.App. 85a–92a. Overcrowding has also overwhelmed the prisons' medication management system. Int.App. 112a–114a.

The court found that "no other relief" short of a population cap would bring the prison system into compliance with minimum constitutional requirements. Int.App. 168a. That finding was also supported by clear and convincing evidence, including testimony from current and former heads of multiple state prison systems. Int.App. 162a–164a. As the court explained, "[o]ther forms of relief are either unrealistic or depend on a reduction in prison overcrowding for their success." Int.App. 168a. Additional hiring is unrealistic because current facilities lack space for new hires and

clinical vacancy rates are consistently high. Int.App. 108a–109a, 154a–155a. Relying solely on a Special Master is not a viable solution, as years of litigation have already proven. Int.App. 156a–157a. The court gave full consideration to prison construction plans, but found that the State had no "actual, feasible, sufficiently timely" prospect of completing them. Int.App. 146a. The State's proposal to transfer 3,000 prisoners out-of-state would entail too small a population reduction to remedy the constitutional violations. Int.App. 160a–161a, 327a.

The three-judge court likewise concluded that a 137.5% population cap is a narrowly tailored remedy. Int.App. 169a, 175a–185a. Significantly, the court did not mandate individual population-reduction measures; instead, it urged the State to develop its own remedial plan. The court emphasized that the State "would not be required to throw open the doors of its prisons, but could instead choose among many different options or combinations of options." Int.App. 173a–174a.

2. The State sought a stay from this Court, which was denied. *Schwarzenegger v. Coleman*, 130 S. Ct. 46 (2009). The State then submitted a remedial plan that, because it proposed only half-measures, was rejected by the three-judge court as non-compliant. *Coleman* D.E. 3711. Finally, in November 2009, the State submitted a revised plan to bring the prison population to 137.5% of design capacity within two years. The plan incorporates many elements—including good-time credit earning enhancements, re-entry courts, and parole reforms for low-risk offenders—that are required under

recently-enacted state prison reform legislation (Senate Bill 18) and that the State's own experts and officials have previously endorsed as *improvements* to public safety. Int.App. 196a-216a, 321a–329a, 344a–348a.

At the same time it developed a remedial plan, the State sought this Court's review. *Schwarzenegger v. Plata*, 130 S. Ct. 1140 (2010); *California State Republican Legislators v. Plata*, 130 S. Ct. 1142 (2010). The Court denied that request on January 19, 2010 and dismissed for lack of jurisdiction.

3. On January 12, 2010, the three-judge court entered a final order accepting the State's proposed plan. Int.App. 257a–266a. Reiterating that it did not "intervene lightly in the State's management of its prisons," Int.App. 265a, the court held that it would not mandate any specific measures in the State's plan—affording the State maximum discretion to decide which options would best achieve constitutional compliance. The court emphasized its "hope that California's leadership will act constructively and cooperatively ... so as to ultimately eliminate the need for further federal intervention." *Id.*

ARGUMENT

All the State's arguments challenging the three-judge court's order are grounded in the same fact-bound objection—namely, that the remedy imposed is unnecessary and premature. But even a cursory appreciation for the chronology of this extraordinary case exposes the weakness of the State's position. In the circumstances of this case, requiring California

to address its prison overcrowding crisis is a justified and appropriate remedy under the PLRA.

The three-judge court's order requiring California to implement its plan to reach a prison population of 137.5% of total design capacity within two years—an admittedly unusual, but expressly contemplated, remedy under the PLRA—came nearly *fifteen years* after a single-judge court determined that "seriously mentally ill inmates in the California Department of Corrections daily face an objectively intolerable risk of harm as a result of the gross systemic deficiencies that obtain throughout the Department." *Coleman*, 912 F. Supp. at 1316. The order followed a lengthy post-judgment remedial period, spanning three California governorships, during which the State's prison administrators worked closely with a Special Master in a failed attempt to remedy the deficiencies. The order came after more than 70 court orders and 20 Special Master monitoring reports proved ineffective in the face of a prison population spiraling out of control. And the order came after California's Governor admitted that California's prisons face a serious "health care crisis" and "overcrowding crisis" because "for decades the state of California hasn't really taken it seriously." Pls.' Trial Ex. 384.

Urging the Court to overlook this case's history, the State devotes much of its jurisdictional statement to unfortunate hyperbole, exaggerating the burdens of the lower court's order while downplaying the unprecedented seriousness of California's prison crisis. It is therefore important to emphasize what is not at issue in this appeal: "defendants' mental health care delivery system has

not come into compliance with the Eighth Amendment at any point since this action began" in 1990. Int.App. 67a. The following facts are also not in reasonable dispute: The single-judge court in *Coleman* found that California's prison system poses an "objectively intolerable risk of harm" to seriously mentally ill inmates. Int.App. 170a. The single-judge court in *Plata* found that "future injury and death" of California prisoners is "virtually guaranteed in the absence of drastic action." *Id.* And, in both cases, the State has failed to remedy those deficiencies despite having "every reasonable opportunity" to do so. Int.App. 74a, 170a.

The State's jurisdictional statement suggests that progress has been made and hints that the constitutional violations may no longer exist. But these suggestions are directly contrary to the record evidence and the facts found by both the single-judge and three-judge courts, and the State maintains the option of demonstrating the absence of constitutional violations to the single-judge court. Indeed, the State does not (and cannot) dispute that some judicial remedy for ongoing constitutional violations is urgently needed, even as it challenges the particular remedy selected by the three-judge court.

The State's arguments instead boil down to a dispute over whether the remedy ordered is warranted under the State's view of *the facts*. But the ongoing exigencies, uncommonly expansive record, and fact-intensive nature of the questions raised render this case a poor candidate for this Court's plenary review. Just as fact-bound assessments are poor candidates for this Court's

certiorari jurisdiction, *see* Sup. Ct. R. 10, the questions raised here do not merit this Court's plenary review.

I. The Three-Judge Court Was Properly Convened Under The PLRA But The Issue Is Not Properly Before This Court.

The State argues that the three-judge court lacked jurisdiction because it was purportedly convened before the State had "a reasonable amount of time to comply with the previous court orders." SJS 11–18. This argument is not properly before the Court. It also lacks merit.

1. This Court has jurisdiction to review orders "*granting or denying ... an interlocutory or permanent injunction* in any civil action, suit or proceeding required by any Act of Congress to be heard and determined *by a district court of three judges*." 28 U.S.C. § 1253 (emphases added). The decision to convene a three-judge court, however, is neither an "order granting or denying ... an interlocutory or permanent injunction," nor a decision "by a district court of three judges." *Id.*; *Gonzalez v. Automatic Employees Credit Union*, 419 U.S. 90, 97 n.14 (1974) (§ 1253 restricts "jurisdiction to orders actually entered by three-judge courts"). Instead, it is a decision made by the district court judge (actually two separate district court judges in separate orders, neither of which is appealable directly to this Court), who is responsible for determining whether constitutional violations exist and has authority to convene a three-judge court at the remedial stage of proceedings. Accordingly, the State's jurisdictional challenge lies in the first instance with the court of appeals and not with this

Court under 28 U.S.C. § 1253. *See In re Slagle*, 504 U.S. 952, 952 (1992) (White, J., dissenting) ("we narrowly view our appellate jurisdiction in three-judge court cases"). The State did not pursue a timely appeal of the single-judge court's order and it should not be allowed to use the PLRA to end-run the ordinary appellate procedures for challenging a district court decision.

The State contends that the single-judge court's focus on California's "unsuccessful remedial efforts" is inconsistent with the PLRA's requirement that a "prisoner release" be a "remedy of last resort." SJS 15. But that confuses the decision to grant relief with the separate question whether to convene a three-judge court. A three-judge court is appropriately convened when the requesting party submits materials demonstrating that (i) the single-judge court has "previously entered an order for less intrusive relief that has failed to remedy the deprivation" of federal rights; and (ii) "the defendant has had a reasonable amount of time to comply" with those orders. 18 U.S.C. § 3626(a)(3)(A), (C). The single-judge court is thus required by statute to focus on whether previous remedial efforts have proven unsuccessful. In contrast, whether a "prisoner release order" is an appropriate "remedy of last resort" is to be decided by the three-judge court applying different standards. *Id.* § 3626(a)(3)(E). The former question was decided by a single judge and is not appealable directly to this Court. The Court should dismiss the State's first question presented for want of jurisdiction.

2. In all events, a three-judge court was properly convened here. The *Coleman* plaintiffs

filed suit more than 20 years ago seeking to remedy serious constitutional violations occurring in California's prisons. It was not until more than a decade of post-judgment proceedings—with the State failing to cure violations notwithstanding 70 previous court orders—that the *Coleman* plaintiffs moved to convene a three-judge court.

The State suggests that the lower courts acted hastily. But that suggestion cannot be reconciled with the record facts. For example, the State asserts that the *Coleman* "plaintiffs moved to convene a three-judge court only eight months after the district court approved new remedial plans." SJS 15. In fact, the 2006 order was only one of many orders approving refinements in remedial plans that had unsuccessfully governed the State's mental health program for nearly a decade. The State tries to create a similar misimpression by referencing orders issued in June 2006. *See id.* But those orders were likewise part of a succession of (unsuccessful) escalating measures employed since 1997. That the single-judge court continued to issue remedial orders as late as 2006 is not a sign that the State had inadequate time; instead, it is further proof that the court's previous orders were not working.

Significantly, when plaintiffs moved to convene a three-judge court, the single-judge court stayed the matter for six months and sought input from the Special Master, who reported that the few areas of improvement had "succumbed to the inexorably rising tide of population, leaving behind growing frustration and despair." Defs.' Trial Ex. 1292 at 17. Only then did the district court judge request that the three-judge court be convened. As the judge

explained, it had "been almost twelve years" since it had found "widespread violations of the Eighth Amendment" and yet the State still had not complied with its basic constitutional obligations. 09-416-App. 297a. The correctness of that decision was confirmed by the State itself. As California's Governor declared: "I don't blame the courts for stepping in to try to solve the health care crisis that we have, the overcrowding crisis that we have, because the fact of the matter is, for decades the state of California hasn't really taken it seriously." Pls.' Trial Ex. 384.

3. The State has no meaningful rejoinder to these points. It instead tries to cast doubt on the seriousness of the ongoing constitutional violations. *See* SJS 15–17; *see also* SJS 23–25, 30–31; IJS 10–11. But the decision to convene a three-judge court does not turn on whether the State may have made "progress." The question is whether previous court orders successfully remedied the ongoing deprivation of federal rights. *See* 18 U.S.C. § 3626(a)(3)(A). The State has conceded that previous court orders have not been successful. SJS 25–26; *Plata*, 2010 WL 1729472, at *8.

Moreover, the State's attempt to re-litigate the underlying constitutional violations is not properly before the Court. The Court has no jurisdiction under 28 U.S.C. § 1253 to determine whether the constitutional violations were properly found by the single-judge courts. Nor should the Court consider factual assertions that were never made below. In the single-judge proceedings, the State did not oppose the motion for a three-judge court on grounds that current conditions satisfied constitutional

requirements. *Coleman* D.E. 2063 at 3–9; *Plata* D.E. 579, 600. That was a rational litigation decision because the overwhelming evidence shows, and the State's judicial admissions confirm, that California continues to provide constitutionally inadequate prison medical and mental health care. Constitutional violations continue to this day, caused primarily by the ongoing overcrowding crisis that leaves too few resources being stretched to cover too many prisoners.

II. The Three-Judge Court's Decision To Issue A Remedial Order Complies With The PLRA.

The State contends the three-judge court's order is "contrary to" the PLRA's requirements. SJS 18. But the PLRA affirmatively contemplates that where, as here, a State has failed to resolve constitutional violations, a prisoner release order may be an "[a]ppropriate remedy." 18 U.S.C. § 3626. Such orders are appropriate when (1) crowding is the "primary cause" of the violation of federal rights, and (2) "no other relief" will remedy that violation. *Id.* § 3626(a)(3)(E). The court below found these conditions satisfied. The State's challenge to that finding raises a host of factual issues, but it does not raise any substantial legal questions warranting this Court's plenary review.

A. The Three-Judge Court Properly Applied The "Primary Cause" Requirement.

The State contends that in finding that overcrowding is the "primary cause" of the ongoing constitutional violations, the lower court failed to

give "primary cause" its proper meaning. SJS 18. The State's arguments have been forfeited and, in any event, lack merit.

1. The court below adopted *verbatim* the definition of "primary cause" that *the State* proposed: "primary cause" means the "'first or highest in rank or importance; chief; principal.'" Int.App. 78a. That standard is a rigorous one. Unlike a mere "contributing factor" standard—a test discussed in the State's jurisdictional statement that no party proposed and the lower court did not apply—the requirement that crowding be the "first or highest" cause ensures that a court will not issue a remedial order merely because it is "frustrated" with a defendant's failure to correct constitutional violations. SJS 20–21. The State now argues, for the first time, that the PLRA's "primary cause" language requires a showing that the cause is a "proximate and 'but for' cause" of constitutional violations. SJS 19. Because the State did not champion this standard below, the argument is forfeited. *See Sprietsma v. Mercury Marine*, 537 U.S. 51, 56 n.4 (2002).

2. Even if this new argument were not forfeited, it is legally unsupported. "Primary cause" and "proximate cause" are distinct concepts. *See N.Y. Cent. R.R. Co. v. White*, 243 U.S. 188, 205 (1917) (act "disregards the proximate cause and looks to one more remote,—the primary cause"); *United States v. Hatfield*, 591 F.3d 945, 949 (7th Cir. 2010) (Posner, J.) (it "confuses things" to equate primary and proximate cause). Although the terms occasionally overlap, *see In re The G.R. Booth*, 171 U.S. 450, 460 (1898) (proximate cause was "primary"

source of relevant damage), the State offers no authority from the PLRA context or otherwise to suggest that Congress intended to define "primary cause" to mean "proximate cause." *See BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004).

3. In any event, even assuming that "primary cause" means a "proximate and 'but for' cause," SJS 19, that standard would be satisfied with clear and convincing evidence. Current and former heads of major correctional systems, including California's, testified that the State could not cure the unconstitutional conditions unless crowding was brought under control. *See* Int.App. 84a ("[o]vercrowding ... is preventing" the State "from providing adequate mental and medical health care to prisoners" (internal quotation marks omitted)); Int.App. 129a (same); Tr. 217–218, 271, 1583. Clinical experts testified to the same effect, explaining that "'[r]educing the population ... is the only way to create an environment in which other reform efforts ... can take root in the foreseeable future.'" Int.App. 168a; *see also* Int.App. 130a. In short, overcrowding is a "but for, proximate" cause of the underlying constitutional violations because it poses a unique, insuperable obstacle to providing adequate medical and mental health care services to prison inmates.

4. The State also contends that a cause is not a "primary cause" of constitutional violations unless eliminating the cause would "undo all or virtually all constitutional harm." SJS 20. But it would subvert Congress's intent (and raise serious constitutional concerns) if a court could not remedy the principal cause of constitutional violations unless relief would

simultaneously resolve every possible deficiency. Indeed, the State's reading would mean that courts' remedial powers are at their *weakest* in the worst prisons, where a multitude of problems have caused the most dangerous conditions. That interpretation of the PLRA makes no sense.

5. The State's real dispute is not with the legal standard applied by the lower court but rather with that court's *fact-intensive* judgment that overcrowding is the "primary cause" of the State's failure to provide constitutionally adequate medical and mental healthcare. Yet the State concedes that overcrowding is *a cause* of the violations. Tr. 2953–2954. Indeed, even the State's expert concedes that overcrowding is the *primary cause* of some violations. Tr. 1092–1094, 1120; Int.App. 138a. The dispute presented is thus only a matter of degree—whether overcrowding is the first or highest cause, or merely a subsidiary cause, of all or only some of the constitutional violations. The lower court's decision is entitled to deference and should be reviewed only for clear error. *See Miller v. Johnson*, 515 U.S. 900, 917 (1995).

The State has not come close to showing that the three-judge court clearly erred. The court's unanimous opinion, which devotes 46 pages to discussing "Crowding As Primary Cause," Int.App. 4a–5a, catalogues the evidence supporting its conclusion that overcrowding is the "primary cause" of the constitutional violations. Int.App. 140a–141a. That conclusion is not some phantom in the eyes of the three-judge court. Four current and former prison administrators from five states, California, Texas, Pennsylvania, Washington, and Maine, all

testified that crowding is the primary cause of California's continuing prison deficiencies. Int.App. 81a.

The record demonstrates that severe overcrowding has resulted in living conditions that cause prisoners' mental health to deteriorate. *See* Int.App. 100a–104a, 116a–118a, 121a–123a; *Coleman*, D.E. 3201 ¶¶ 76–87. Overcrowding has impaired the ability of prison personnel to identify and treat prisoners' health care needs. Int.App. 85a–92a. Overcrowding has prevented California from maintaining the essential elements of a functional health care system, including providing basic medications, Int.App. 112a–114a, maintaining accurate medical records, Int.App. 118a–121a, preventing deaths and suicides, Int.App. 123a–126a; *Coleman*, D.E. 3217 at ¶ 173; *Coleman* D.E. 3221 at ¶¶ 100, 109–10, and managing the risk of transmitting infectious diseases. Int.App. 89a, 101a–102a. These deficiencies are compounded by shortages in treatment space, mental health beds, and staff resulting from overcrowded prison populations. *See* Int.App. 85a–89a, 92a–95a, 97a–100a, 104a–112a.

The three-judge court thus drew on clear and convincing evidence in concluding that overcrowding is the first and highest cause—and not simply a subsidiary cause—of the State's inability to provide minimally adequate mental healthcare to inmates. That fact-intensive determination does not justify this Court's plenary review.

B. The Three-Judge Court Properly Concluded That "No Other Relief" Would Remedy The Constitutional Violations.

The State also disputes the three-judge court's determination that "no other relief" would remedy the constitutional violations, listing alternative measures to which it claims the court gave insufficient weight. SJS 22–27. In fact, the lower court carefully considered each proposed alternative and addressed why each was not a viable remedy. Int.App. 145a–168a; *see also* 18 U.S.C. § 3626(a)(3)(E)(ii).

1. The State first contends that the court's analysis is inconsistent with testimony that, in other state prison systems, constitutionally adequate medical and mental health care has been provided in overcrowded prisons. SJS 21–22. But this assertion ignores the extraordinary circumstances of this case, where for more than 15 years under more than 70 orders, California has failed to fix its constitutionally inadequate prison conditions due to unprecedented overcrowding. California's overcrowding crisis is unparalleled, even according to the State's own estimates. Int.App. 56a, 61a–65a, 166a. Experts who inspected the prisons before trial witnessed "almost unheard of" levels of overcrowding. Int.App. 78a; *see also* Tr. 144–145, 270–273, 286–287, 296–298.

2. The State next contends that its commitment to construct new facilities and to hire additional staff rendered the three-judge court's order unnecessary. But the court specifically explained why those commitments did not obviate

the need to impose a prison population cap. Int.App. 145a–155a. In particular, the court cautioned that the mere potential for construction should not itself preclude relief because "the state could, in theory, always build more prisons." Int.App. 146a. It also found that, under the State's proposed timeline, new facilities would not be available for many years. Int.App. 153a–154a. The court similarly found that the State faces "ongoing difficulty in filling vacant positions" and that accommodating significantly more personnel would require space that does not exist. Int.App. 154a–155a.

These findings are well supported. Three years after the State passed a prison building law, AB 900, the State has yet to build any additional prison beds. In 2009, the State failed to fund a healthcare facility that would have provided additional medical and mental health beds. Int.App. 150a. Similarly, the State has not provided funding under AB 900 for in-fill construction projects, and, even if funds were available, the projects included "allocations of clinical space that 'are wildly disparate and, in many cases obviously inadequate.'" Int.App. 151a–152a. Building projects dedicated to mental health treatment have stalled, with completion deadlines pushed years into the future. *Coleman* D.E. 3685, 3736, 3825 ¶ 7, 3825-2 at 99/110 to 102/110, 3841. As the three-judge court found, the State has no "actual, feasible, sufficiently timely" plans for construction in the near future. Int.App. 146a.

3. The State also contends that it could solve the overcrowding crisis by transferring prisoners out of state. If this is true, however, nothing in the three-judge court's order prevents the State from

doing so. Out-of-state transfers are part of the State's approved population reduction plan. St.App. 43a. Indeed, to the extent transfers have the "purpose or effect of reducing" the in-state prison population, any order including transfers is a "prisoner release order" under the PLRA. 18 U.S.C. § 3626(g)(4); Int.App. 159a n.58. The State asserts that the single-judge court limited out-of-state transfers. SJS 26. But the court set no limits on the number of prisoners available for out-of-state transfer; it merely precluded the transfer of seriously mentally ill prisoners. *Coleman* D.E. 2025 at ¶ 5. In fact, the State has steadily increased its use of out-of-state prisons, where it now houses over 8,000 prisoners.

4. Finally, although the State argues that the lower court should have given more time for the *Coleman* Special Master and *Plata* Receiver to remedy the constitutional violations, the three-judge court reasonably found that the Special Master's and Receiver's laudable efforts would continue to fail absent a solution for overcrowding. Int.App. 30a, 49a–52a, 142a, 155a–159a.

The Special Master has repeatedly stated that growing population pressures have largely eliminated any compliance gains made with respect to mental health care. Int.App. 49a–52a (noting "troubling reversal in the progress of the remedial efforts" and "profound impact of population growth"); Defs.' Trial Ex. 1292 at 17. Expert testimony likewise confirmed that any "tentative progress" has been "overwhelmed by the massive population expansion" despite "more than ten years

of intensive monitoring and other remedial efforts." *Coleman* D.E. 3221 at ¶ 120; *see also* Tr. 317–318.

C. The Three-Judge Court Based Its Findings On Current Prison Conditions.

The State suggests that the three-judge court's findings are unreliable because the court purportedly assumed that California is not providing constitutionally adequate prison medical and mental health care. SJS 25–26. In particular, it spotlights the three-judge court's rulings concerning the scope of its authority and distorts those rulings into a supposed exclusion of evidence addressing the current state of California's prisons. SJS 25 & n.9; IJS 10.

The State's position is ironic given that, in the proceedings below, it attempted to block prison inspections and moved *in limine* to exclude evidence of current prison conditions. *Coleman* D.E. 2814 at 3, 3101. Its position is also meritless. The three-judge court made clear that it was not barring evidence of current conditions. To the contrary, the evidence would be received "to the extent it illuminates the questions that are properly before the court." Tr. 837. Even the State's counsel recognized the distinction between re-trying the single-judge case and "inform[ing] the court of exactly the impact of overcrowding on the mental health services delivery system" both in the past and "as the population exists today." *Id.*

Contrary to the State's suggestions, it was not barred from presenting evidence from either the *Coleman* Special Master or the *Plata* Receiver. In

fact, the three-judge court ordered that the Receiver's most current report, including 15 items requested by the State, be received into evidence. *Plata* D.E. 1450. The State also made extensive use of the Special Master's up-to-date reports. Although it opposed the 2008 prison inspections, the State ultimately sent its experts to inspect the prisons, and their trial testimony was based on their first-hand experience of current prison conditions. *See* Tr. 1072–1138, 1192–1264. The State likewise presented testimony regarding current medical and mental health care expenditures, staffing, and results, *id.* at 725–755, 756–823, 838–945, presumably because plaintiffs' evidence consisted almost entirely of testimony regarding the current state of California's prison medical and mental health care. *See* Tr. 63–137, 293–362, 420–502.

III. The Three-Judge Court's Remedial Order Complies With The PLRA.

Contrary to the State's assertions, the order below is "narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct" the constitutional violations that continue to cast a dark shadow over California's prisons. 18 U.S.C. § 3626(a)(1)(A). Far from levying a series of rigid mandates, the remedial order affords the State "'wide discretion within the bounds of constitutional requirements.'" *Lewis v. Casey*, 518 U.S. 343, 361–63 (1996).

1. The three-judge court's order strikes an appropriate balance, enforcing the Constitution's "basic ... minimally adequate" standards without unduly interfering with the State's prerogatives.

Coleman, 912 F. Supp. at 1298. Indeed, the order is striking for what it does *not* require. Although a population cap may constitute a "prisoner release order" in a technical sense, the cap does not mandate the release of prisoners or any specific measures. Int.App. 261a. The State has "maximum flexibility" to choose among various options, including providing good time credits; diverting low-level, low-risk offenders and parole violators; increasing rehabilitative programming; constructing new facilities; transferring prisoners out of state; or any other measures that in the State's judgment might address the overcrowding crisis. Int.App. 259a.

The three-judge court's order is consistent with federalism principles. *See Missouri v. Jenkins*, 515 U.S. 70, 98 (1995). The court declined to micromanage the State's financial resources, entrusting the State to address funding issues "under its general responsibilities to the public and in accord with the PLRA." Int.App. 261a. The court also acknowledged that the design capacity benchmarks would not remain "static." Int.App. 262a. It explained, for example, that if the State were to build new facilities, that "increase in design capacity through construction would decrease the number of inmates by which the prison population must be reduced." *Id.*

2. The State contends that the lower court misunderstood the concept of "design capacity." SJS 29–30. But that is not true. The State's arguments regarding design capacity only highlight the nexus between overcrowding and the remedy for constitutional violations. While the State is correct

that housing two inmates in a cell does not violate the Eighth Amendment, it is undisputed that California's prisons were not built to provide adequate medical and mental health care above 100% design capacity. Int.App. 56a–58a; Defs.' Trial Ex. 1007 ¶ 72; Tr. 858–859, 1224. It is not the double-celling or percentage overcapacity by itself that constitutes the violation, but the effect that overcrowding has on the State's ability to provide constitutionally adequate care.

The State also contends that plaintiffs' experts recognized that constitutionally adequate medical and mental health care *could* be provided in certain *other* state prisons where the population exceeds design capacity. SJS 30–32. But there is no evidence that this would hold true in California, and experts were unequivocal that constitutionally adequate care *could not* be provided in California's overcrowded prison system. Int.App. 166a; Tr. 217–218, 259, 286–287. The question for the three-judge court was not whether, in the abstract, limiting a prison population is the only reasonable way to address constitutional violations. Rather, the three-judge court had to deal with the reality of a system overcrowded to extreme levels far beyond the experience of other States, Int.App. 166a; Tr. 270–273, 286–287, 296–298, which consequently could not provide minimally humane levels of care, even after 15 years of other remedial efforts.

The State also contends that there was no basis for setting the 137.5% cap, suggesting that the three-judge court "substituted professional standards and desirable benchmarks for constitutional requirements." SJS 32. But a more

stringent cap of 130% comes from a recommendation by the Governor's own prison reform personnel and was supported by testimony from current and former heads of prison systems in California, Texas, Pennsylvania, Maine, and Washington. Int.App. 180a. The court acknowledged that setting a percentage cap could not be an "'exact science,'" and that its task was "further complicated" by the State's failure to present "any evidence or arguments suggesting that" the court "should adopt a percentage other than 130% design capacity." Int.App. 175a. Even after finding that a 130% cap "comports with the PLRA," the three-judge court raised the cap to 137.5% out of deference to the State. Int.App. 169a.

3. For the first time, the State asserts that the lower court's order is overbroad because it potentially affects prisoners outside the plaintiff class—including, for example, prisoners who may not have serious mental health disorders or serious medical conditions. SJS 28–29. But that assertion is a rhetorical innovation conjured up on appeal. At trial, the State rejected targeted relief focused solely on the plaintiff classes, arguing that the three-judge court should *exempt* mentally ill prisoners from any population reduction order. *See* Int.App. 236a. As the State undoubtedly recognized, a targeted mandate would impair its ability to account for whether prisoners are high- or low-risk by reducing the pool of prisoners who could be assessed. *Cf.* Int.App. 224a.

The State nonetheless contends that the cap is improper because it purportedly attempts to ameliorate prison conditions generally rather than

remedy constitutional violations unique to class members. *See id.* In fact, the lower court acted consistent with the principles adopted by this Court in *Bounds v. Smith*, 430 U.S. 817, 832–33 (1977), and *Lewis v. Casey*, 518 U.S. 343, 361–63 (1996), by deferring to the State to determine the method by which the population will be reduced and hence which prisoners will be affected. As the court recognized, this approach provides "the deference to state expertise required by the PLRA and *Lewis*" and limits the judiciary's intrusion into "the minutiae of prison operations." Int.App. 175a (internal quotation marks omitted). The State exercised that flexibility by submitting a plan that elected to reduce the prison population for the benefit of all prisoners, not just class members. Int.App. 309a–354a.

The State's reliance on *Hines v. Anderson*, 547 F.3d 915 (8th Cir. 2008), is misplaced. In *Hines*, the court terminated a 1977 consent decree because it was not targeted at a particular constitutional violation. *Id.* at 922. Here, in contrast, the three-judge court acted on clear and convincing evidence of repeated constitutional deficiencies in medical and mental health care caused by overcrowding. Int.App. 163a–164a. Even the Intervenors' expert concurred that "the necessary constitutional medical and mental health services can't be provided with today's overcrowding." Tr. 2202; *see also* Tr. 2190. The fact that a cap may benefit non-class members does not make it any less necessary. *Cf. Davis v. Bd. of Sch. Comm'rs*, 402 U.S. 33, 37–38 (1971) (approving structural reforms impacting non-class members); *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 465–68 (1979) (same); *Smith v. Arkansas*

Dep't of Corr., 103 F.3d 637, 645–46 (8th Cir. 1996) (system-wide relief appropriate where injury not remediable on individualized basis).

4. Finally, the State's contention that the three-judge court disregarded public safety distorts the court's decision. SJS 33–34. The court devoted nearly ten days of trial and examined hundreds of exhibits related to public safety, Int.App. 185a, and found that the State "*could* comply with [the] population reduction order *without a significant adverse impact upon public safety*." Int.App. 187a (second emphasis added). The State stated that it could "safely reach a population level of 137.5%" of design capacity. Int.App. 272a. And the Governor, in presenting his proposal to the State legislature, declared that a reduction of 37,000 prisoners could be accomplished safely in two years. *See Plata* D.E. 2258 Ex. B (Matthew Cate, *Prisons: It's Time to Reform and Reduce the Population*, Capitol Weekly, Aug. 13, 2009); *see also* Tr. 2984–2985.

The State suggests that crime rates may spike absent significant investment in effective rehabilitation. SJS 33; IJS 18–19. Not true. The overwhelming empirical evidence shows no significant relationship between crime rates and early release. Int.App. 243a–246a. Dozens of jurisdictions throughout the country have safely implemented reductions in prison and jail populations without witnessing increases in recidivism or crime. Int.App. 202a–203a, 243a–246a. Similarly, numerous county jails in California release prisoners to maintain capacity around or below 100% due to safety concerns and/or court-imposed population caps. Int.App. 224a–227a &

n.84, 202a–203a. Moreover, as the court explained, the States' substantial savings from a manageable prison population could be redirected towards "rehabilitative and reentry programming in the prisons" and community re-entry programs, which have been shown to *promote* public safety. Int.App. 187a, 235a.

* * * *

The three-judge court's narrowly tailored order complies with the PLRA. It is admittedly an unusual order, but this is an unusual case. As the lower court determined, the "'future injury and death' of California prisoners is 'virtually guaranteed in the absence of drastic action.'" Int.App. 170a (quoting *Plata* D.E. 371). After 20 years of continuing constitutional violations that, despite more than 70 previous court orders, the State has failed to remedy, the State should not be allowed to further delay taking actions to address overcrowding that it concedes can be safely implemented within two years. Because the extreme circumstances of this case are unlikely to recur and because the order below presents no substantial legal questions, the Court should affirm the lower court's decision.

CONCLUSION

For these reasons, the Court should dismiss or summarily affirm the decision below.

Respectfully submitted,

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